IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2617 OF 2006

India United Mill No.5, a Unit of
National Textile Corporation (MN) Ltd. ...Petitioner.
Vs.
Shri Vasant Ramchandra Nar. ...
Respondent.

....

Mr.V. N. Parkar for the Petitioner.
Mr. S.Z. Choudhary for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

November 13, 2006.

P.C.

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondent waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

The Respondent joined the services of the Petitioner as a *Badli* employee from 4th April 1968 and was subsequently made a permanent employee with effect from 1st July 1973. On 30th January 2006, the Respondent submitted an application in which he stated that his date of birth was recorded as July 1946 at the time when he was recruited. Accordingly to the Respondent, his

correct date of birth was 1st March 1947 and he sought a correction in the date of birth mentioned in the service record, relying on a School Leaving Certificate. A memo of retirement was issued on 1st April 2006 intimating to the Respondent that he would retire from service on completing the age of superannuation of 60 years with effect from 1st July 2006. The Respondent submitted a representation on 28th April 2006 to which the management submitted a response on 12th May 2006. The management stated that at the time of employment, the Respondent had given his year of birth as 1946 and that as far back as in December 1981, the management had put up notices giving an opportunity to employees to bring authentic proof regarding their respective dates of birth. The management stated that at the end of his service, the Respondent was not entitled to a correction in his date of birth and that in any event the Respondent was not entitled to an extension of service until the age of 1963, since he was working as Assistant Foreman which post was supervisory in character.

The Respondent filed a complaint of unfair labour practices on 6th June 2006 and sought a correction in the date of birth to 1st March 1947 claiming that on that basis he would be

entitled to remain in service until 2nd March 2010. An application for interim relief was made in the complaint of unfair labour practices. By its order dated 28th June 2006 the Industrial Court allowed the application in part and directed the Petitioner not to give effect to the memo of retirement until 1st March 2007 on which date the Respondent would complete the age of 60 years, according to the revised date of birth as proposed by the Respondent.

In assailing the correctness of the order passed by the Industrial Court, it has been submitted on behalf of the Petitioner that the Industrial Court was not justified in granting interim relief particularly having regard to the fact that the employee had applied for the correction of his date of birth belatedly on 30th January 2006, nearly 38 years after he joined the services and merely five months before retirement. Counsel submitted that if the complaint is ultimately allowed, the Respondent would be entitled to such consequential relief as the Industrial Court may consider appropriate, but the interference of the Industrial Court at the interlocutory stage was not warranted. That apart, it was submitted that on 28th December 1981 and again on 14th December

1985, the management had furnished a sufficient opportunity to the employee to produce authentic proof in support of his date of birth and the later notice stipulated that if no specific date of birth was forthcoming within the year of birth that is recorded at the time of appointment, the date of birth will be fixed as 1st July of the concerned year. On the other hand, it was submitted on behalf of the Respondent that even if ordinarily interlocutory relief of the nature should not be granted, in the present case the Respondent should be allowed to continue until 31st December 2006. This was on the basis that where the year of birth is alone mentioned in the service record, the date of retirement should be taken as 31st December of that year.

The record before the Court would show that the management had put up initially a notice on 28th December 1981 in which there is a reference to the fact that applications are received from employees on the eve of their retirement for the correction of the date of birth. Such applications created difficulties in carrying out a verification of the genuineness of the claim and would also be liable to cause inconvenience to the employees concerned. In these circumstances, time was granted to all

employees to produce authentic proof in regard to any application for the correction of the date of birth until 31st January 1982, failing which it was stated that no further application would be entertained. It was also stated that a further notice was put up on 14th December 1985 intimating to all employees that where at the time of recruitment only the year of birth had been mentioned, the date of birth would be taken as 1st July of the concerned year. The Respondent in the present case moved an application on 30th January 2006, a few months before retirement from service seeking a correction of the recorded date of birth from July 1946 to 1st March 1947. In response to his representation dated 28th April 2006, the management by a letter dated 12th May 2006 adverted to the aforesaid circumstances and rejected the request for correction. In a matter of this nature, it is inappropriate for the Industrial Court to grant interlocutory relief. Time and again the Supreme Court has emphasised that it would be wholly inappropriate for Courts to grant interim relief restraining the employer from retiring the employee on the basis of the date of birth recorded at the time of recruitment. In the event that the employee ultimately succeeds, the grant of appropriate relief can be considered by the Court at the final hearing. Interlocutory

orders of the nature are liable to irretrievably prejudice the employer since it would be impossible to set the clock back even if the complaint filed by the employee is found to be lacking in merit. Contrariwise, if the complaint is found to be genuine and is allowed, monetary relief can always be granted at the final hearing of the complaint. As a matter of principle, the Industrial and Labour Courts should not entertain such applications for interim relief. There is no reason why exception should be made in the present case by allowing an application for interim relief. The complaint itself is filed in June 2006 on the eve of retirement and even the application for the correction of the date of birth was made only a few months before that. In the circumstances, it was not appropriate for the Industrial Court to grant interim relief and the order of the Industrial Court has accordingly to be quashed and set aside. However, at this stage Counsel appearing on behalf of the Respondent has stated that the Petitioner may be directed to pay the terminal dues of the workman on the footing that he has retired from service on the date stipulated in the retirement memo, in accordance with law. There is no reason why the payment of retiral benefits should be held up. The Petitioner is directed to do so expeditiously and within a period of two months

from today.

In the circumstances, the petition is allowed by quashing and setting aside the order of the Industrial Court dated 28th June 2006. Rule is made absolute in terms of prayer clause (a). In the circumstances of the case, there shall be no order as to costs.